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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,900	07/03/2001	Kevin Taylor	H0075/7076/REH	3612

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EXAMINER

SORKIN, DAVID L

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 06/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/898,900

Applicant(s)

TAYLOR ET AL.

Examiner

David L. Sorkin

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 and 27-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 17-26 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 21 April 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 11.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

Interview Summary	Application No.	Applicant(s)	
	09/898,900	TAYLOR ET AL.	
	Examiner	Art Unit	
	David L. Sorkin	1723	

All participants (applicant, applicant's representative, PTO personnel):

(1) David L. Sorkin.

(3) _____.

(2) Robert E. Hunt.

(4) _____.

Date of Interview: 05 February 2003.

Type: a) ☒ Telephonic b) ☐ Video Conference

c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: _____.

Claim(s) discussed: 1-35.

Identification of prior art discussed: not discussed.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiner's Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: (Note: applicant has already summarized this interview in paper No. 9; no further summary by applicant is required). Mr. Hunt acknowledged that claim 35, as originally drafted in paper No. 7 was not a "linking claim" because a "mixing box" was not recited, but said applicant planned to amend the apparatus claims to require a "mixing box". The Examiner stated that support for an apparatus including a "mixing box" in combination with the other claimed elements would be required. Mr. Hunt said the specification contained such support. The Examiner did not agree or disagree with Mr. Hunt during the interview regarding whether such support existed. The examiner acknowledged that because the apparatus claims did not currently positively recite a "mixing box", it was hypothetically possible that positive recitation of a "mixing box" would make the claims allowable; however, the Examiner did not express any opinion regarding whether any particular reference disclosed a "mixing box". The interview was an unscheduled interview that occurred when Mr. Hunt telephoned the Examiner .

DETAILED ACTION

Election/Restrictions

1. In paper No. 6, restriction was required between (I): claims 1-13 and 17-26, drawn to a mixer and scale combination and (II): claims 14-16 and 27-34 drawn to a method of mixing asphalt. Claim 35, added in paper No. 7, is considered to be directed to invention (I), as explained in paper No. 8. In paper No. 9, applicant amended the claims of Group (I) to require an asphalt mixing box (or asphalt mixing box means for receiving). In paper No. 9, applicant argues that claim 35, as amended, is a "linking claim". The examiner agrees that one of ordinary skill in the art reading the text of claim 35 would find that the invention of claim 14 is disclosed or rendered obvious by the text of claim 35. In this sense, the examiner agrees to consider claim 35 to be a "linking claim". However, the examiner disagrees with applicant statement in paper No. 9, "if claim 35 were found in the prior art, claim 14 would likely not be patentable". The examiner disagrees with this statement because claim 14 is not anticipated unless the allegedly anticipatory prior art process involves "asphalt". On the other hand, claim 35, being an apparatus claim, is still anticipated by prior art disclosing all the claimed structural elements in combination, regardless of whether or not "asphalt" is disclosed. "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claims" *Ex parte Thilbault*, 264 USPQ 666,667 (CCPA 1967). Also, "[i]nclusion of material or article worked upon be a structure being claimed does not impart patentability to the claims", *In re Otto*, 136 USPQ 458, 459 (CCPA 1963)). Furthermore, "the manner or method in

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which such machine is to be utilized is not germane to the issue of patentability of the machine itself". For example Hood (US 5,908,240) and Rudolph (US 4,498,783) disclose the claimed apparatus, without (as currently understood by the examiner) disclosing "asphalt" and therefore without disclosing the process of claim 14 (although applicant may believe that it would have been obvious to have used these prior art apparatuses to mix asphalt). In summary, while the examiner considers that claim 14 can be anticipated without claim 35 being anticipated, the examiner acknowledges that applicant has included in claim 35 language which is not germane to the patentability of claim 35, whereby one reading claim 35 would be in possession of all the limitations of claim 14. In any case, as claim 35 is rejected herein below, claims 14-16 and 27-34 remain withdrawn from consideration.

2. This application contains claims 14-16 and 27-34 drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Drawings

3. The proposed drawing corrections filed on 21 April 2003 have been approved. Corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 8-13 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Rudolph (US 4,498,783). Regarding claim 1; Rudolph ('783) discloses an apparatus comprising a receptacle (21); a scale (43), a mixer (26,27,28,29); a transport system (41) and a mixing box (65) . Regarding claim 2, the apparatus comprises one more inlets (24, 25) that communicate with the receptacle. Regarding claim 3, the scale is adapted to measure gravimetric amounts of materials in the receptacle and comprises one or more load cells (43) tared to account for the weight of the receptacle (see col. 4, lines 22-29). Regarding claim 4, the mixer comprises a vertical auger (26,27,28,29) centrally located in said receptacle. Regarding claim 5, the transport system comprises a motor driven rotary valve (see col. 3, lines 55-59). While the apparatus of Rudolph ('783) would be capable of performing the operation described in claim 6, applicant is advised that "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claims" *Ex parte Thilbault*, 164 USPQ 666, 667 (Bd. App. 1969). Also, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey* 152 USPQ 235

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(CCPA 1967). Regarding claim 8, Rudolph ('783) discloses an apparatus comprising a receptacle (21) having an inlet (23,24); weighing means (43) connected to the receptacle, mixing means (26,27,28,29); transfer means (41); a programmable control system (44,45,46,47,48,49,50) having input from said weighing means and controlling outputs to said inlet of said receptacle and to said mixing means and said transferring means (see col. 3, lines 47-59; col. 4 lines 30 to col. 6 line 23; Fig. 1) and a mixing box (65). Regarding claim 9, the apparatus has one or more inlets (23,24). Regarding claim 10, said weighing means comprises one or more load cells (43). Regarding claim 11, the mixing means comprises a vertical auger (26,27,28,29) centrally located in said vessel. Regarding claim 12, the transfer means comprises a motor driven rotary valve (see col. 3, lines 55-59). While the apparatus of Rudolph ('783) would be capable of performing the operation described in claim 13, applicant is advised that "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claims" *Ex parte Thilbault*, supra. Also, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey* supra. Regarding claim 35, Rudolph ('783) discloses an apparatus comprising a means for feeding (1-20); weighing means (43), mixing means (26,27,28,29); means for transferring (41); and asphalt mixing box means (65) for receiving.

6. Claims 1-13, 17-26 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Hood (US 5,908,240). Regarding claim 1; Hood ('240) discloses an apparatus comprising a receptacle (12); a scale (37), a mixer (13); a transport system

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(15,16) and a mixing box (see col. 3 line 66 to col. 4 line 3). Regarding claim 2, the apparatus comprises one more inlets (28, 30) that communicate with the receptacle. Regarding claim 3, the scale is adapted to measure gravimetric amounts of materials in the receptacle and comprises one or more load cells (37) tared to account for the weight of the receptacle (see col. 5, lines 10-13). Regarding claim 4, the mixer (13) comprises a vertical auger (18) centrally located in said receptacle. Regarding claim 5, the transport system comprises a motor driven rotary valve (15)). While the apparatus of Hood ('240) would be capable of performing the operation described in claim 6, applicant is advised that "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claims" *Ex parte Thibault*, supra. Also, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey* supra. Regarding claim 7, the apparatus further comprises a transfer pipe (40,41) connected to the receptacle. Regarding claim 8, Hood ('240) discloses an apparatus comprising a receptacle (12) having an inlet (28,30); weighing means (37) connected to the receptacle, mixing means (13); transfer means (15,16); a programmable control system (60) having input from said weighing means and controlling outputs to said inlet of said receptacle and to said mixing means and said transferring means (see Fig. 3; col. 4, lines 23-28; col. 5, lines 6-13) and a mixing box (see col. 3 line 66 to col. 4 line 3). Regarding claim 9, the apparatus has one or more inlets (28,30). Regarding claim 10, said weighing means comprises one or more load cells (37). Regarding claim 11, the mixing means comprises a vertical auger (18)

centrally located in said vessel. Regarding claim 12, the transfer means comprises a motor driven rotary valve (15). While the apparatus of Hood ('240) would be capable of performing the operation described in claim 13, applicant is advised that "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claims" *Ex parte Thilbault*, supra. Also, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey* supra. Note: as stated in paper No. 8, paragraph 6, it is considered that no "asphalt mixing box" is a required element of any of claims 17-26. While other claims have been amended to require a mixing box, these claims have not. Nonetheless, Hood ('240) discloses a mixing box in col. 3 line 66 to col. 4 line 3. Further regarding claim 17, Hood ('240) discloses an apparatus comprising a receptacle (12) having an inlet having an inlet (28, 30); a mixer (13); a transfer pipe (40,41) extending from an outlet (to 16) of the receptacle, and a pneumatic pressure source connected to said transfer pipe (see col. 3, lines 2-6; col. 4, line 61; col. 5, lines 32-40). Regarding claim 18, the transfer pipe has a vertical portion (see at/near 16 in Fig. 1). Regarding claim 19, the apparatus further comprises a valve (33; see also col. 8, lines 17-25). Regarding claim 20, means (32,33) for diverting pressure are disclosed. While the apparatus of Hood ('240) would be capable of performing the operation described in claims 21, 23 and 26, applicant is advised that "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claims" *Ex parte Thilbault*, supra. Also, "the manner or method in which such machine is to be

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utilized is not germane to the issue of patentability of the machine itself' *In re Casey* supra. Regarding claim 22, weighing means (37) connected to the receptacle and transfer means (16) are disclosed. Regarding claim 24, a programmable control system (60) having input from said weighing means and controlling outputs to said inlet of said receptacle and to said mixer and said transferring means (see Fig. 3; col. 4, lines 23-28; col. 5, lines 6-13). Regarding claim 25, means for diverting (32,33) are disclosed and the controller is programmable to operate said diverting means (see Fig. 3; col. 4, lines 23-28). Regarding claim 35, discloses an apparatus comprising a means for feeding (28,29,30,31); weighing means (37), mixing means (13); means for transferring (40,41); and asphalt mixing box means (see col. 3 line 66 to col. 4 line 3) for receiving.

Response to Arguments

7. The examiner disagrees with applicant's assertion that "neither Rudolph nor Hood teach or suggest an asphalt mixing box". In Hood (US 5,908,240) the examiner considers that col. 3 line 66 to col. 4 line 3 discloses any structure implied by such a limitation. In Rudolph (US 4,498,783) the examiner considers that reference sign "65" includes any structure implied by such a limitation.

8. Regarding claim 17, the examiner continues to consider that no "mixing box" is required by the claim. See paragraph 6 of paper No. 8. Nonetheless, Hood (US 5,908,240) discloses a mixing box in col. 3 line 66 to col. 4 line 3. The examiner continues to consider that Hood ('240) discloses any structure implied by the limitation in claim 17 "a pneumatic pressure source connected to said transfer pipe that conveys said blend along said transfer pipe from near the output of said receptacle to the input of

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said asphalt mixing box". Hood ('240) explicitly states in col. 4, lines 62-67, "air pressure within the vessel, assisted by the vibration, is thus used to force the slurry through discharge outlet 16 and pipe 40 to either a truck or central mixer". Whether one wishes to consider the "vessel" itself to be the "source" or the source to be "source 80" which is connected to the pipe(s) 40 and 41 via the inlet 14 and the vessel 12, the claim is anticipated.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

June 24, 2003



CHARLES E. COOLEY
PRIMARY EXAMINER